

Statement of Alex Bosco

Hearing on “ATF’s Assault on the Second Amendment: When is
Enough Enough?”

Before the

COMMITTEE ON OVERSIGHT AND ACCOUNTABILITY
SUBCOMMITTEE ON ECONOMIC GROWTH, ENERGY
POLICY, AND REGULATORY AFFAIRS

AND

COMMITTEE ON THE JUDICIARY
SUBCOMMITTEE ON CRIME AND FEDERAL
GOVERNMENT SURVEILLANCE

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Chairmen Fallon and Biggs, ranking members Bush and Jackson Lee, distinguished members of Congress, my name is Alex Bosco, and it is my privilege to testify at this hearing about an ATF regulation that reverses the agency's decade-long position that pistols with stabilizing braces are not subject to the heightened and onerous regulatory requirements of the National Firearms Act and Gun Control Act. As a result of this change, millions of law-abiding Americans must now submit their photographs and fingerprints to the federal government or surrender their lawfully purchased firearms. The change will cost the economy \$5 billion dollars and destroy hundreds of small businesses.

I was born in Milan, Italy and emigrated to the United States in 1973. My mother was a teacher and my father, who soon obtained his American citizenship, went through dental school when I was a young child and opened his own private practice. My mother taught both French and Italian in high school for over 35 years in New Jersey where both my brother and I grew up. I have always felt privileged and humbled at the opportunities that were given to me, my family, and my father in particular, who came to this country as an immigrant and was warmly welcomed and able to live the American dream.

After graduating from Rutgers University with a BA in languages having focused on Italian, French, Spanish, and German, I felt a certain pull towards serving my country and joined the United States Marine Corps. As a Field Radio Operator in an artillery unit, I learned a lot about this country's most important resource which is indeed the men and women who sacrifice to serve. When 9/11 happened, I had recently left the Marine Corps, but decided I wanted to serve in the Global War on Terrorism and joined the Army. I served with the Southern European Task Force's Augmentation unit under the command of the 173rd Airborne and AFRICOM. While in the Army, among other things, I served as an Armorer, and was in charge of maintaining the weapons of an Airborne Infantry Unit and used my language skills as a liaison between the Italian Carabinieri and US forces. I mobilized with that unit and played a crucial role in assisting with the run-up and deployment of the 173rd Airborne into northern Iraq.

Having served in both the Marine Corps and the Army is, to this day, one of the most incredible experiences and privileges of my life. I'm also a proud father of two very bright young kids, ages 11 and 13, and husband to an Italian woman who obtained her American citizenship in 2015.

Like many other service members who return home after a deployment or honorable discharge, I enjoyed going to the firing range to maintain my shooting skills. I have always felt that there is just something about this sport that improves focus and mental clarity through the physical discipline of safely operating a firearm. And many of the other veterans I encountered at the range felt the same way not only about the shooting aspect, but what happens after shooting. There is a significant amount of camaraderie with your fellow sportsmen. Also, the experience can be exhilarating and cathartic. Even the meticulous effort of cleaning and maintaining one's firearm is rewarding.

One day at the range, an over-eager range officer told one of my range buddies, a wounded veteran, that he was not carefully firing his weapon. The range officer said that because (in his opinion) my friend was firing erratically, he had to bench his pistol from the seated position. Because of the wounds my friend had received in service of his country, the range officer's suggestion made me angry, first because I did not agree that my friend was shooting in a dangerous manner, and second, because I thought it unconscionable that he or anyone like him should be denied the opportunity to safely use a firearm due to wounds received in service of the United States.

This experience led to the invention of the pistol stabilizing brace. When I returned home that evening, I started fashioning my first brace out of foam material that I removed from an old camera case. Using a knife, I shaped the material into a design that would accommodate a shooter's forearm, split the two flaps down the middle, and attached the first primitive brace onto the back of another friend's AR15 pistol.

Although the materials and production have become more sophisticated over time, every brace that my company has designed since that first day at the range is based on that initial concept and functions in the same way. Today, like back in 2012, each SB Tactical product is an orthotic device made out of an elastomer material—basically rubber—and has one or more flaps and a strap to safely secure the firearm to the shooter's forearm. Indeed, the brace design—"a strap and a cuff made of an elastomer material"—mimics well established orthotic devices, such as the forearm crutch, as an expert report submitted with our agency comments makes clear.

It also is not a force multiplier in any way, shape, or form. It simply allows a shooter to fire a weapon more accurately by giving the shooter an additional point of contact at the forearm.

After I developed my first prototype foam brace, I called the ATF's Firearms Technology Branch and explained my design. The individual I spoke to suggested that I make the product and submit it to the agency for a formal classification. At the same time, I began the process to obtain a provisional patent for the brace and made additional prototypes using a rubber kit from a local arts and crafts store. My father, being a dentist, came in handy, as he taught me the "lost wax" method of making jewelry, and it was a method similar to this that I used to make my first prototypes. I sent a letter of explanation along with my prototype to the Firearms Technology Branch.

ATF responded in writing stating that attaching a stabilizing brace "would not alter the classification of a pistol or other firearm" and that "such a firearm *would not be* subject to NFA controls." (Letter attached.) Furthermore, ATF recognized that a "'brace,' when attached to a firearm, d[oes] 'not convert that weapon to be fired from the shoulder.'"

In the ten years that followed, my business steadily grew. We continued to innovate and even secured two utility patents and eight design patents. In addition to wounded veterans, other people who desired to operate their firearms more safely with the stability that a brace provides purchased our product. Along the way, I worked with attorneys, former ATF regulators, and a former presidentially-appointed ATF Director to seek guidance from ATF whenever we made adjustments to the original design of the brace that I had submitted in 2012.

On a side note, it should be made clear that hiring the aforementioned people has a significant cost to a regulated company, such as SB Tactical, but is unfortunately necessary when the regulated agency isn't clear in how it will interpret regulations and when the regulations have dire consequences, even if inadvertently broken.

The agency's guidance was unclear and contradictory. As my product grew in popularity, other companies began introducing their own designs and submitting them to ATF. These decisions were not made public by the agency. But during that time, some private classification letters began to be posted to the Internet by their recipients. Each new letter seemed to add additional criteria for whether a particular device properly functioned as a stabilizing brace. This made it exceptionally difficult not only to keep up with compliance, but also to innovate and invest in new product development without clear rules of the road.

ATF added to the confusion in 2014. At that time, ATF issued a private letter to a law enforcement officer stating that even if an individual used a brace to fire from the shoulder, it would not change the classification of the firearm. The decision was posted online. A few months later, President Obama appointed B. Todd Jones as director at ATF. The agency then reversed its position by issuing an open letter to the public on their website stating that simply holding a braced-pistol to one's shoulder *would* redesign that firearm into an NFA-regulated short-barreled rifle—a felony punishable by up to 10 years in prison. This was the first time ATF had ever said in a public document that a stabilizing brace could change the classification of a pistol. As you can imagine, this decision created great uncertainty among law abiding gun owners.

Two years later, the agency changed its mind again. This time, ATF stated that “incidental” shouldering of a braced pistol does not result in a redesign and therefore is not a regulated NFA firearm, and that “stabilizing braces are perfectly legal accessories for large handguns or pistols.” This declaration, returning to the agency’s 2012 position, appeared to authoritatively settle once and for all what everybody in the industry already knew—that attachment of a stabilizing brace should not change the classification of a pistol or other firearm.

Relying on ATF’s many favorable private letter rulings posted to the internet, millions of Americans purchased pistols affixed with stabilizing braces. During this time, SB Tactical continued its practice of seeking clear guidance from ATF regarding what standards could be used to develop new braces through a series of meetings and correspondence with ATF. Although SB Tactical would later learn that ATF had started issuing private letter rulings that certain brace-affixed pistols *were* now covered by the NFA, in contradiction of the agency’s public position, ATF never made those decisions public.

In 2019, at the urging of ATF, SB Tactical submitted several of its products for classification. While these classifications were pending, ATF published proposed criteria in the Federal Register that would guide then agency’s classification decisions. Days later, ATF withdrew those criteria.

Shortly after his swearing in, President Biden ordered ATF “to treat pistols modified with stabilizing braces” as short-barreled rifles “subject to the National Firearms Act.” President’s Remarks on Gun Violence Prevention Efforts, 2021 Daily Comp. Pres. Doc. 298, at 3 (Apr. 8, 2021). This “change,” the president said, would require an owner of a pistol equipped with a stabilizing brace to “pay a \$200 fee and submit their name, and other identifying information, to the Justice

Department” or face criminal penalties. The president even admitted that his goal was to make these changes “without having to go through the Congress.”

ATF published a proposed rule in the Federal Register on June 10, 2021. There, ATF proposed a points-based worksheet that considered numerous factors including whether the brace-affixed firearm facilitated one-handed firing.

Over a year and a half later, on January 31, 2023, ATF published the final rule. The final rule was significantly different than the rule they had originally proposed. With respect to the brace’s utility for one-handed firing, the final rule now stated that, “[th]e fact that the ‘stabilizing brace’ makes firing a standard pistol more accurate or more enjoyable is irrelevant.” Rule, 88 Fed. Reg. at 6.519. Additionally, the final rule rescinded all previous classification decisions and declared that, under the new rule, 99% of pistols equipped with stabilizing braces will be deemed subject to NFA controls. Final Regulatory Impact Analysis and Final Regulatory Flexibility Analysis, at 21 (Jan. 2023) (“Regulatory Analysis”).

The effects of this change are enormous. According to ATF, *millions* of Americans who followed ATF’s advice for the past decade have, unbeknownst to anyone, been committing felony gun crimes. And ATF almost certainly underestimates the scope of the problem. In the final rule, ATF assumes that there are approximately 3 million firearms with attached braces in circulation. Rule, 88 Fed. Reg. at 6,560 (estimating “3 million ‘stabilizing braces’ and firearms with an attached ‘stabilizing brace’ currently in circulation”). But ATF stopped counting in 2020, Regulatory Analysis at 18 (estimating braces sold “between the years 2013 to 2020”), and, since then, SB Tactical sold more than 2.3 million braces. And that does not account for sales by other brace manufacturers.

In addition to harming individuals, ATF’s decision will destroy an important sector of the firearms industry. According to ATF, the final rule will cause 4 out of the 5 brace manufacturers to close and will cost somewhere between \$2 and \$5 billion dollars.

I am experiencing these costs personally. As a direct result of the rule, the company I founded, SB Tactical, is likely to go out of business within the next couple of months. Gun owners, as a whole, are some of the most law-abiding folks in our country. They also value their privacy. None of them want to run afoul of the NFA as a result of the agency’s flip flop. But neither do they want to purchase new braces when ATF now says that, in order to use these braces, people must register in a federal database and submit their photographs and fingerprints to the government.

The effect of ATF's rule is to put the very industry that ATF itself fostered for 10 years out of business . In fact, that is its purpose.

This is outrageous. Imagine if another executive agency, the IRS, decided to reinterpret statutes that impose criminal penalties on practices the agency had condoned for years, suddenly criminalizing long-standing practices based on the whims of a new administration. Now imagine that the same thing is happening across the board in federal administrative agencies. The situation would be completely untenable. This isn't a left or right issue. It's not even really a Second Amendment issue, though Second Amendment rights are certainly at stake here. It is fundamentally a good government issue. And the ATF's regulation of pistol-affixed braces after ten years of contrary guidance is not good government. Ironically, this rule eliminates an important and widely adopted safety feature that will arguably make the sport of pistol shooting less safe.

Ultimately, this rule should be seen for what it is: circumvention of the legislative process that will set precedent for years to come. What other criminal statutes might our executive agencies decide need to be rewritten or "clarified?" Here, an executive branch agency is deciding to force almost a million Americans to destroy or turn in their firearms to the federal government with millions more forced to register their firearms. All in all, ATF estimates up to a \$5 billion economic loss, which is likely low. Such decisions should be reserved to Congress alone.

I would like to close with a question from Justice Gorsuch:

The agency used to tell everyone [one thing] . . . Now it says the opposite. The law hasn't changed, only an agency's interpretation of it. How, in all this, can ordinary citizens be expected to keep up? . . .

Congress should immediately repeal this rule.

Thank you and I look forward to your questions.